

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JOVAN MILLER,	)	
	)	
Movant,	)	
	)	
vs.	)	No. 4:10CV2310 HEA
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Movant's Motion under 28 U.S.C. § 2255 by a Person in Federal Custody, [Doc. No. 1]. Pursuant to this Court's Order, the government has responded to the motion to vacate. For the reasons set forth below, the Motion is denied.

\_\_\_\_\_ Movant makes the following claims in his Motion:

**Ground One:** A change in the law that narrows the scope of a criminal statute by interpreting its terms.

**Ground Two:** New substantive rules apply retroactively. This includes decision that narrow the scope of a criminal statute by interpreting its terms

**Ground Three:** The sentence of 30 months imposed pursuant to the mandatory enhancement for prior serious drug offense is now an unlawful sentence.

**Ground Four:** Petitioner is denied the right to due process under the law, in

violation of the 5th Amendment of the United States Constitution.

**Ground Five:** Petitioner is being denied Equal Protection under the 14th Amendment.

In a very succinct and pointed Response, the Government agrees with Movant that Movant's federal conviction for possession with intent to distribute cocaine base, Cause Number 4:03CR428 CEJ, is no longer a felony justifying a higher base level. What Movant fails to recognize, however, is that his prior conviction was then and is still a Class B felony pursuant to 21 U.S.C. § 841(a)(1).

Nothing in the Fair Sentencing Act of 2010 benefits Movant. Movant was convicted of being a felon in possession of a firearm, and the amount of cocaine base he possessed is simply irrelevant for the charge.

### **Conclusion**

Based upon the foregoing analysis, Movant's claims fail to afford him relief.

### **Certificate of Appealability**

The federal statute governing certificates of appealability provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A substantial showing of the denial of a constitutional right requires that "issues are debatable among reasonable jurists, a court could resolve the

issues differently, or the issues deserve further proceedings.” *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997). Based on the record, and the law as discussed herein, the Court finds that Movant has not made a substantial showing of the denial of a constitutional right.

Accordingly,

**IT IS HEREBY ORDERED** that the Motion to Vacate, Set aside or Correct Sentence, [Doc. 1], and the supplement thereto, are **DENIED**.

**IT IS FURTHER ORDERED** that this Court will not issue a Certificate of Appealability as Movant has not made a substantial showing of the denial of a federal constitutional right.

A separate judgment is entered this same date.

Dated this 16th day of January, 2014.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE

